

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**MALCOLM A. BUTLER,
Plaintiff,**

v.

Case No. 13-CV-00984

**DETECTIVE PETER FALK,
Defendant.**

DECISION AND ORDER

Plaintiff, Malcolm A. Butler, who is incarcerated at the Kenosha County Detention Center, filed a pro se pleading entitled "Petition for John Doe Hearing" that was construed as a complaint and filed on August 29, 2013. This matter comes before me now on plaintiff's motion for leave to proceed in forma pauperis and for screening of his complaint. Plaintiff has been assessed and paid an initial partial filing fee of \$29.54, and I will grant his motion for leave to proceed in forma pauperis.

I am required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). I must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

As I mentioned above, plaintiff's pleading is entitled "Petition for John Doe Hearing." In it, plaintiff asks the court for a hearing to review the facts and evidence in the petition, which he asserts will show that Detective Peter Falk committed a crime. Plaintiff suggests

that the evidence will warrant criminal investigation and prosecution of Detective Falk. Plaintiff maintains that Detective Falk committed perjury when he made a false material statement under oath while applying for a search warrant and that he falsified reports during his investigation.

Individuals may not file criminal charges in federal courts. A criminal proceeding is initiated by the government, usually through the United States attorney's office in coordination with a law enforcement agency. There is a procedure for bringing John Doe petitions in state court, but a review of the Wisconsin Circuit Court Access system reveals that plaintiff already filed his petition in state court on March 15, 2013 (<http://wcca.wicourts.gov/index.xsl>, Kenosha County Case No. 2013JD000001). A special prosecutor reviewed the documents and transcripts but determined on August 8, 2013 that the State would not be issuing criminal charges. Id. Plaintiff requested reconsideration, but that request was denied on October 8, 2008. Id.

THEREFORE, IT IS ORDERED that plaintiff's motion for leave to proceed in forma pauperis (Docket #5) is **GRANTED**.

IT IS FURTHER ORDERED that this action be and hereby is **DISMISSED** pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1) for failure to state a claim.

IT IS FURTHER ORDERED that the Clerk of Court document that this inmate has brought an action that was dismissed for failure to state a claim under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).

IT IS FURTHER ORDERED that the Clerk of Court document that this inmate has incurred a "strike" under 28 U.S.C. §1915(g).

IT IS FURTHER ORDERED that the Kenosha County Sheriff shall collect from plaintiff's prison trust account the \$320.46 balance of the filing fee by collecting monthly payments from plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action.

IT IS FURTHER ORDERED that the Clerk of Court enter judgment accordingly.

IT IS ALSO ORDERED that copies of this order be sent to the Kenosha County Sheriff and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

I FURTHER CERTIFY that any appeal from this matter would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3) unless the plaintiff offers bonafide arguments supporting his appeal.

Dated at Milwaukee, Wisconsin, this 15th day of October, 2013.

s/ Lynn Adelman

LYNN ADELMAN
District Judge